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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,411	03/30/2004	David Lee Eastburn	411951-239	5542
23879	7590	11/29/2005	EXAMINER	
BRIAN M BERLINER, ESQ O'MELVENY & MYERS, LLP 400 SOUTH HOPE STREET LOS ANGELES, CA 90071-2899			WONG, LINDA	
			ART UNIT	PAPER NUMBER
			2634	

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/814,411

Applicant(s)

EASTBURN, DAVID LEE

Examiner

Linda Wong

Art Unit

2634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-11 and 14-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-11, 14-18, 21, 22 and 24 is/are rejected.
- 7) ☒ Claim(s) 18-19 (originally 19-20), 23, 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Regarding **claims 3 (line 18), 4 (line 20), 5 (line 19), 6 (line 22), 14 (line 12), 15 (line 12), 16 (line 11), 17 (line 12), 21 (lines 8 and 11), 24 (lines 4 and 8)**, the phrase "if" renders the claim indefinite because it is unclear as to whether a force or change of the carrier frequency will occur, since the term "if" is an infinite term. Thus, all occurrences of the term "if" must be changed to "when" to definitively state a change in the carrier frequency occurs when the amount of time on the first carrier frequency is less than the amount of time it would take to perform the particular transaction.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 5, 7-11, 16, 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over McLean (US Patent No.: 6486769) in view of Flammer, III et al. (US Patent No.: 5471469).

- a. **Claim 5**, McLean discloses a radio frequency identification (RFID) system comprising at least 1 transponder composed of a transmitter and receiver (Fig. 2, labels 124a and b) and a processor connected to the transmitter and receiver (Fig. 2, labels 126 and 124). Although McLean does not teach the change to a second frequency before the amount of time available on the first carrier frequency expires, Flammer, III et al. discloses changing the carrier frequency or hops to another frequency if the data transmission is longer or larger than the regulations of the FCC. (Col. 5, lines 3-10) In order to comply with FCC regulations, it would be obvious to one skilled in the art to incorporate Flammer's teaching in McLean's apparatus to change to a second carrier frequency before the amount of time available to the first frequency expires. McLean, inherently, discloses the amount of time to transmit a particular transaction is calculated since this would be needed to determine if the transmission time needed is longer than the regulations set by the FCC.
- b. **Claim 7**, McLean discloses at least one transponder. (Fig. 1, labels 160 and 170)
- c. **Claim 8**, McLean discloses an RF communication system comprising a memory storing instructions, data, and parameters for the processor. Although McLean does not explicitly state the memory component stores information as to when the processor should hop to a different carrier frequency, it would be obvious to one skilled in the art to include such instructions in the memory device as

disclosed by McLean to eliminate multiple computations of the same information made accessible through storage.

- d. **Claims 9-10**, McLean discloses converting digital signals to analog signals or a digital to analog converter coupled to a processor or control logic (Fig. 3, label 166) and transmitter/receiver (Fig. 3, label 162).
- e. **Claim 11**, McLean discloses a transceiver. (Fig. 2, labels transmitter and receiver)
- f. **Claim 16**, McLean discloses a radio frequency identification (RFID) system comprising at least 1 transponder composed of a transmitter and receiver (Fig. 2, labels 124a and b) and a processor connected to the transmitter and receiver (Fig. 2, labels 126 and 124). Although McLean does not teach the change to a second frequency before the amount of time available on the first carrier frequency expires, Flammer, III et al. discloses changing the carrier frequency or hops to another frequency if the data transmission is longer or larger than the regulations of the FCC. (Col. 5, lines 3-10) In order to comply with FCC regulations, it would be obvious to one skilled in the art to incorporate Flammer's teaching in McLean's apparatus to change to a second carrier frequency before the amount of time available to the first frequency expires.
- g. **Claim 18**, Although McLean and Flammer, III does not explicitly state transmitting a first RF signal and a second RF signal involves selecting commands and data from a list, it would be obvious to one skilled in the art,

based on design choice, to include a list of commands and data to be sent to effectively determine what data and how to send such data to receiver.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 21 and 22** are rejected under 35 U.S.C. 102(e) as being anticipated by Fry (US Publication No.: 20030189638).

- a. **Claim 21**, Fry discloses a frequency-hopping-spread-spectrum (FHSS) method comprising transmitting a first frame or first radio frequency signal on a first carrier and transmitting a second frame or a second radio frequency signal on a first carrier frequency if the amount of dwelling time is sufficient enough to encompass a second frame as well as the first frame and inherently discloses transmitting the second frame at a second carrier frequency if the dwelling time left is less than the time needed to transmit. (page 5, paragraphs [0058],[0059],[0060]) Although Fry does not explicitly state determining the amount of time available on the first carrier frequency and determining the amount of time it would take to transmit a particular RF signal, Fry, inherently, states calculating the available time and time needed to transmit since such information determines how many frames can be transmitted during the

dwelling time and the dwelling time is regulated by the FCC. (page 5,
paragraphs [0058],[0059],[0060])

- b. **Claim 22** inherits all the limitations of claim 21.

Allowable Subject Matter


4. **Claims 3,4,6,14,15,17,24** would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.
5. **Claims 19-20, 23,25** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linda Wong whose telephone number is 571-272-6044. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Chin can be reached on (571) 272-3056. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Linda Wong


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